IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7496 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

PARMAR VANRAJSINH MAFUBHA

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Appearance:

1. Special Civil Application No. 7496 of 2001
MR RV DESAI, AGP for Petitioner No. 1
RULE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/12/2001

ORAL JUDGEMENT

In this petition purporting to be one under Articles 226 and 227 though in substance a petition under Article 227 of the Constitution, the State of Gujarat through the Deputy Director of Agriculture, Kukada Farm in Surendranagar District has challenged the judgment and

award dated 2.12.2000 passed by the Labour Court, Surendranagar in Reference (LCS) No. 346 of 1992 whereby the Labour Court declared as illegal the termination of the respondent from service with effect from 1.5.1989 and directed the Government to reinstate the respondent in service with 20% backwages for the period from 11.12.1991 till the date of the award.

2. Heard Mr RV Desai, learned AGP for the State of Gujarat. Though the respondent was served on 25.9.2001, none appears when the matter is called out today for final hearing. It was specifically stated in the notice of Rule that the hearing of this Special Civil Application will take place on 16.10.2001 or any subsequent day convenient to the Court. Still none appears for the respondent.

3. The learned AGP for the petitioner has submitted that the petitioner was running a horticulture farm at Kukada and the petitioner was not running any industry. The respondent was not given any regular employment as the project itself was temporary and even when the farm was being run, the respondent was only employed on seasonal basis i.e. during monsoon period. That is why the respondent was employed for only 99 days in the year 1988 and for 80 days in the year 1989. It is submitted that in the case of State of Gujarat vs. Pratamsingh Narsinh Parmar, JT 2001(3) SC 326 it has been held by the Apex Court that the Government department cannot generally be considered as an industry and that it is for the workman to show that the Government department is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as `the Act'). It is submitted that the petitioner had specifically taken the plea in the written statement before the Labour Court that the petitioner was not carrying on any industry, but still the respondent had not led any evidence to show that the petitioner was carrying on any industry. Even then the Labour Court has not merely not given any finding on the said issue, but has proceeded to apply the provisions of the Act. The respondent had abandoned his services in the year 1989, but the dispute was raised after more than two years. Reliance is also placed on the decision of the Apex Court in the case of Himanshu Kumar Vidyarthi vs. State of Bihar, AIR 1997 SC 3657 laying that in case of daily wagers there is no question of retrenchment; and on the decision of the Apex Court in the case of State of Himachal Pradesh vs. Suresh Kumar Verma, AIR 1996 SC 1565 laying down that when the workman is employed on any project and the project is closed down, there cannot be

any direction for reinstatement of a daily wager. It is pointed out by Mr Desai that in the instant case the horticulture farm where the respondent was employed was closed down. This fact was stated on behalf of the petitioner before the Labour Court also.

4. Having heard the learned AGP for the petitioner, it appears that there is considerable substance in the submissions made by the learned AGP. It has been held by the Apex Court in the case of State of Gujarat vs. Pratamsingh Narsinh Parmar, JT 2001(3) SC 326 as under :-

> "5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes `an industry'. Ordinarily, a Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was discharging and with regard to the activities of the organization where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been contended that the order of dismissal is vitiated for non-compliance of Section 25-F of the Act. The State in its counter affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot beheld to be an industry so that the provisions of Section 25-F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in Jagannath Maruti Kondhare (JT 1995 (9) SC 465) to hold that the Forest Department could be held to be `an industry'."

5. Further there is also considerable substance in the submission made by the learned AGP that in view of the decisions of the Apex Court in Himanshu Kumar Vidyarthi vs. State of Bihar, AIR 1997 SC 3657, State of

U.P. vs. Ajay Kumar, (1997) 4 SCC 88 and State of Himachal Pradesh vs. Suresh Kumar Verma, AIR 1996 SC 1565, daily wage appointments are in relation to contingent establishment in which there cannot exist any post and the vacancy continues so long as the work exists. In the facts of the instant case, the Labour Court has not at all considered the fact pointed out on behalf of the petitioner-employer that the horticulture farm in question was closed down. Since the respondent had put in less than 240 days service in each year prior to the date of alleged termination, the question of complying with the provisions of Section 25F did not arise, even assuming that the petitioner was carrying on any industry.

6. In view of the above discussion, the petition deserves to be allowed and is accordingly allowed. The impugned judgment and award dated 2.12.2000 passed by the Labour Court, Surendranagar in Reference (LCS) No. 346 of 1992 is hereby quashed and set aside and the reference is dismissed.

7. Rule is made absolute with no order as to costs.

(M.S. Shah, J.)
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